IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 80 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI MALJIBHAI PATEL

Versus

SWAMI HARIPRASAD GURU KESHAVNANDJI

Appearance:

MR BS PATEL for Petitioners

MRS KETTY A MEHTA for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/09/2000

ORAL JUDGEMENT

1. The present second appeal under Section 100 of the Code of Civil Procedure arises out of the judgment and decree passed in Regular Civil Appeal No.125 of 1981 by the District Judge, Bharuch, on the 31st December, 1982. The said appeal arose out of a judgment and decree

passed by the learned Civil Judge (S.D.), Bharuch in Regular Civil Suit No.147 of 1978 on July 18, 1981.

2. The said Regular Civil Suit No.147 of 1978 was preferred by Shri Laxminarayan Mandir Trust through its trustee Swami Hariprasadji Guru Keshavanandji against the present appellants seeking a declaration of dissolution of partnership or partnership firm named as 'Laxminarayan Irrigation Scheme', in partnership with defendants No.1 and 2, with further relief seeking rendition of accounts from inception of the partnership till its dissolution from the defendants along with cost of the suit.

2.1 The case of the plaintiff-trust, stated in nut-shell, is that the plaintiff-trust is a charitable trust registered under the Bombay Charitable and Religious Trusts Act and Swami Hariprasad Guru Keshavanand was the trustee. The trust owns several agricultural lands as well as other properties. Former trustee was Keshavanandji Guru Motiramji, Guru of Swami Hariprasad, who had filed the suit on behalf of the trust and Keshavanandji used to manage the affairs of the property of the trust. He had given a power of attorney to one Amardasji Maharaj for managing the property. Mahant Keshavanandji Guru Motiramji expired around 1972 and Amardasji Maharaj also expired in 1973. Since then, all the properties of the trust are being administered by Swami Hariprasad as a trustee of the trust and being disciple (Shishya) of Keshavanandji, is entitled to bring the suit. It was the contention of the plaintiff that the defendants used to visit Laxminarayan Temple quite often and had good relations with Guru Keshavanandji. The defendants also owned agricultural lands near

Zadeshwar and Antroli and are engaged in agricultural activities. The defendants had thought of a drip irrigation scheme around 1970 for supplying irrigation water in Zadeshwar area and presented the idea to Swami Keshavanand Amardasji Maharaj and the plaintiff-Hariprasad. There was need for raising capital for implementing the scheme and the defendants were not able to raise requisite funds and, therefore, they invited Mahant Keshavanand to become a partner in the scheme by mortgaging properties of Laxminarayan Mandir Trust for raising funds, to which Mahant Keshavanand Amardasji and the plaintiff agreed. For starting the scheme, a total amount of Rs.60,000/- was required to be raised and it was decided that the share in the partnership would be commensurate with the contribution of each of the partners towards capital. Accordingly, defendants No.1 and 2 raised an amount of Rs.40,000/- and

the plaintiff-trust was to invest Rs.20,000/- and, therefor, as agreed, Laxminarayan Mandir Trust was to get a one-third share in the profit/loss of the firm and rest of the two-third share was to go to the defendants. The amount of Rs.60,000/- was decided to be raised by obtaining loan from the Land Development Bank by mortgaging properties of the defendants as well as the plaintiff-trust. Defendant No.1 could raise a loan of Rs.27,600/- and Rs.12,300/- was advanced by defendant No.2, whereas a loan of Rs.20,100/- was raised by mortgaging properties of the temple trust. For that purpose, necessary documents were executed. It is further the case of the plaintiff that, because Laxminarayan Mandir Trust was a partner, the scheme was nomenclatured as "Laxminarayan Irrigation Scheme". The said partnership was entered into with the defendants because Keshavanandji Maharaj and Amardasji Maharaj had trust in the defendants as the defendants used to visit the temple frequently and, out of that trust, the partnership agreement was not reduced to writing. The business of the firm was supposed to be managed by defendants No.1 and 3. It is the case of the plaintiff that, as the investment required for the scheme exceeded Rs.60,000/-, more and more money was provided by the trust from its income out of agriculture and that additional investment went right upto Rs.40,000 to 50,000/-. On that amount, the firm was supposed to pay interest to the trust. The firm was also required to render accounts of the firm to the trust. The accounts were decided to be settled every year. But that could not be done because of ill-health of Keshavanandji from 1970 as he was practically bed-ridden and Amardasji, his power of attorney holder was also pre-occupied in attending him. As a result, the defendants did not render any accounts and said that when Keshavanandji's health improves, the accounts would be settled. Since then, the defendants are running the business of the firm, but have neither rendered the accounts nor have they paid any share in the partnership firm. As the defendants did not pay any heed to the requests made by the plaintiff, a notice was also given on January 3, 1978 by registered post A.D., demanding rendition of accounts and inspection of books of accounts, to which a vague reply was given and, ultimately, the suit came to be filed seeking the above stated reliefs.

2.1 Along with the plaint, an application was given for appointing Commissioner, which was granted.

3. The defendants, on being served with the summons and notice, filed written statement at Ex.21. The

written statement is more or less in the nature of denial and the contention raised in the written statement is that the plaintiff has given a twisted version about the partnership and the relationship. According to the defendants, the defendants wanted to raise loan for the scheme and, for raising loan, certain land was required to be mortgaged. The defendants' land was running short of the extent required to be mortgaged. This was told by the defendants to the deceased Keshavanandji and he, therefore, said that if they agree to provide water to the lands of the trust and undertake to repay the loan, then he is ready to mortgage some land of the temple with the bank. To this proposal by Keshavanandji, the defendants agreed and the funds were raised by mortgaging properties of the temple and the water was provided at concessional rate to the trust. According to the defendants, the entire theory of the trust being a partner is a gross concoction. If that was so, there would have been some document of partnership. According to the defendants, the scheme was named as Laxminarayan Irrigation Scheme not because the trust was a partner but because the defendants were disciples of Laxminarayan temple. The defendants said that the defendants did not have any close relation with Keshavanandji or Amardasji, but this theory is got up only to cover up and support the say of the plaintiff about the oral partnership as there is no document of partnership and, therefore, according to the defendants, the plaintiff is not entitled to bring the suit for rendition of accounts and the suit, therefore, may be dismissed.

4. The Trial Court, after considering rival side contentions, framed issues at Ex.25 as under :-

(1) Whether the plaintiff has established that there was a partnership as claimed for running the Irrigation Scheme in the name and style of "Laxminarayan Irrigation Scheme"?

(2) Whether the plaintiff is entitled to the dissolution of partnership and rendition of accounts as claimed?

(3) What order?

4.1 After considering the evidence, the Trial Court gave the following findings :-

(1) In the affirmative.

(2) In the affirmative.

(3) As per final order.

4.2 Based on the findings on issues, the Trial Court, ultimately, allowed the suit of the plaintiff and passed a preliminary decree appointing a Receiver for taking accounts.

5. The said judgment and preliminary decree of the Trial Court came to be challenged before the District Court at Bharuch. The learned District Judge, after considering rival side contentions, dismissed the appeal.

6. Being aggrieved by the said decisions, the original defendants have preferred this second appeal under Section 100 of the Code of Civil Procedure.

7. While admitting this second appeal, this Court formulated the following two questions :-

(1) Whether, in the facts and circumstances of the present case the lower appellate court has erred in law in holding that there was an oral partnership between the deceased Swami Keshavanandji on behalf of the trust and the defendants as alleged by the plaintiff?

(2) Whether, in the facts and circumstances of the present case, the lower appellate court has erred in law in not holding that the alleged oral partnership stood dissolved in view of the provision contained in Section 42 of the Partnership Act on the demise of Swami Keshavanandji in the year 1972?

8. Learned advocate, Mr. B.S. Patel, appearing for the appellants has raised number of contentions to support the appeal.

8.1 The first contention is that, admittedly, the so called oral partnership was entered into in 1970. According to the observation made by the Trial Court, while giving finding on issue No.(3), the properties were declared as properties of the trust on 2.11.1974. Therefore, Mr. Patel submitted that when the alleged partnership was entered into in 1970, the property was not that of the trust but it was owned by Keshavanandji, in his personal capacity, as sole owner. Keshavanandji, admittedly, expired in 1972 and, therefore, the so called partnership got automatically dissolved on his death.

The suit is brought in 1978 and it is, therefore, time barred.

8.2 The second fold of his argument on the above facts is that the Trust could not have been a partner in the partnership entered into in 1970 because the trust was not the owner of the lands then and, therefore, the trust could not have brought the suit. It may be noted that when being put a query, Mr. Patel admitted that this plea has not been taken either in the written statement in the suit or in the first appeal and it is taken for the first time before this Court.

8.3 Another contention that is raised by learned advocate, Mr. Patel, for the appellant is that both the Courts below have committed an error in not properly interpreting Ex.62 and 63, namely, the application for loan tendered to the bank and the mortgage deed. He submitted that Ex.63 does not reveal any partnership. It only reveals joint and several liability of the borrowers. Mr. Patel submitted further that, therefore, the finding of both the Courts below is arrived at in absence of any material.

8.4 Mr. Patel submitted that both the Courts have overlooked the fact that there was no written document of partnership deed; there was no demand for account for a long time by the plaintiff; no steps were taken by the plaintiff for taking accounts till 1978; there is no evidence to indicate any participation by the plaintiff; there is no evidence to indicate any profit sharing and above all, the amount of loan has been repaid to the bank by the defendants, besides the fact that Ex.62 and 63 do not indicate any partnership. Mr. Patel submitted that, therefore, both the Courts below have committed a gross error in giving a finding of fact in absence of any material and, this Court, therefore, may interfere with the findings of fact recorded by the Courts below.

8.5 Mr. Patel submitted that both the Courts below have not considered the fact that the plaintiff could not produce any permission granted by the Charity Commissioner, as required under Section 35 of the Bombay Public Trust Act, before mortgaging the property to the bank. Therefore, the property necessarily could be inferred to be not belonging to the trust and was owned by Keshavanandji in his personal capacity. The finding of the Trial Court is, therefore, erroneous. According to Mr. Patel, this would be a pure question of law and may be entertained by this Court as the finding is given without considering the provisions of Section 35 of the

Bombay Public Trust Act.

8.6 Mr. Patel submitted that the finding of the Trial Court that name of Laxminarayan is used because Laxminarayan Trust was a partner is without any foundation or material in form of cogent evidence. Otherwise also, the trust had only one-third share in the alleged partnership and two-third of the share was of the appellants. The finding of the Trial Court, therefore, is erroneous and without any evidence or basis.

8.7 Lastly, Mr. Patel submitted that grave injustice is caused to the appellants as an application tendered by the appellants before the First Appellate Court for adducing additional evidence has remained undecided, may be inadvertently. Mr. Patel submitted that an application was given for adducing additional evidence at the appellate stage. The appellants proposed to produce a document in support of their case which they could unearth at a later stage. That document is of great importance. However, that application was ordered to be heard and decided with the main appeal. But when the main appeal was heard and decided, the said application remained unheard and undecided. That document is of such a nature that it would go to the root of the case and, therefore, this Court may either allow the document to be produced on record or may decide that application or may send the matter back to the First Appellate Court. Here again, when asked, Mr. Patel conceded to the fact that this contention is not raised in the memo of Second Appeal.

8.8 In support of the contentions raised by Mr. Patel, he placed reliance on the following decisions:-

(1) B.C. Mehta v. State Bank of Saurashtra, 1998(2) GLH 204.

(2) Ratanlal Bansilal and Others v. Kishorilal Goenka and Others, AIR 1993 (Calcutta) 144.

(3) Jadu Gopal Chakravarty v. Pannalal Bhowmick & Ors., AIR 1978 SC 1329.

(4) Madan Lal v. Gopi & Another, AIR 1980 SC 1754.

(5) Nem Chand v. Gur Dayal, AIR 1925 (Oudh) 451.

(6) Prabod Chandra Chakravarty & Ors. v. Bharat Loan Co. & Ors., AIR 1964 (Assam) 114.

8.9 Mr. Patel submitted that, although only two questions have been formulated while admitting the appeal, the following two questions may also be formulated by the Court :-

(1) Whether, in the facts and circumstances of the case, because of the deceased-Keshavanandji being a partner, the suit was barred by limitation?

(2) Whether the First Appellate Court committed an error in not deciding Ex.19.

Relying on proviso to Section 100 of the Code of Civil Procedure, Mr. Patel submitted that these additional questions may be formulated in order to render substantive justice to the parties.

9. Mrs. Mehta, learned advocate appearing for the respondents, has vehemently opposed to the argument of formulating additional questions suggested by Mr. Patel. She submitted that the first question that is suggested regarding limitation is raised, for the first time, in the Second Appeal. This contention was neither raised before the Trial Court or before the First Appellate Court and, therefore, it may not be formulated at all. Alternatively, she submitted that even if that question is formulated, the suit cannot be said to have been time barred as the limitation would not start running upon demise of Keshavanandji in 1972. In fact, the trust is partner and the suit is for rendition of accounts on basis of a notice and not on death of a partner and, therefore, the suit cannot be said to have been time barred.

9.1 As regards the second question suggested by Mr. Patel, Mrs. Mehta submitted that Ex.19 was ordered to be heard and decided along with the appeal. At that time, the appellants did not press for hearing of that application or for a finding thereon. Even if the contention of the appellants that inadvertently, the application remained undecided is accepted, then also no contention is raised in the memo of appeal before this Court and, therefore, the necessary implication or inference would be that the appellants have waived their application or right or application and, therefore, this question also may not be formulated and even if it is formulated, it may be answered in the negative.

9.2 Adverting to question No.1 formulated by this Court while admitting this appeal, Mrs. Mehta submitted that for deciding this question, the Court will have to

enter into the arena of appreciation of evidence as it is a finding given on facts of the case. Both the Courts below have appreciated the evidence and have come to conclusion after considering the evidence. The appellants are not able to indicate any absence of evidence or existence of evidence contrary to the finding by the Courts below and, therefore, this Court may not interfere with the finding of the Trial Court as no error of law is indicated.

9.3 As regards question No.2, she submitted that the Courts below have come to the conclusion that the partnership was dissolved in 1978. This again is a finding of fact which has not been challenged by the appellants. According to Mrs. Mehta, this plea cannot be taken by the defendants as the case of the defendants is that of denial of partnership and, therefore, dissolution of partnership could not have been contended and taken as a defence. According to her, it was the trust which was the partner and Keshavanandji was the trustee and, therefore, the partnership would not get dissolved on demise of Keshavanandji. The question whether Keshavanandji was the owner of the land or the trust is a question of fact, over which both the Courts below have given concurrent finding and this Court may not enter into that arena in this second appeal. Mrs. Mehta has drawn attention of this Court towards paragraph 8 of the written statement, Ex.21, before the Trial Court, wherein the defendants have come with a specific case that Keshavanandji had agreed to mortgage some properties of the temple if the defendants/appellants agreed to provide water at concessional rates and on defendants agreeing to do so, Keshavanandji mortgaged the property of the temple for raising loan. Mrs. Mehta, therefore, submitted that this is a clear admission on part of the defendants that the property belonged to the temple/trust and not to Keshavanandji himself in his personal capacity, as is vehemently argued on behalf of the appellants and, if this is so, the question of limitation also would not survive. Mrs. Mehta, therefore, submitted that the appeal may be dismissed.

9.4 As regards the decisions relied upon by Mr. Patel, Mrs. Mehta submitted that none of the decisions help the appellants as the facts of the case are totally different in each of the decisions relied upon by Mr. Patel.

9.5 As regards the contention raised by Mr. Patel that the finding of the Courts below that because the trust was a partner, the name of the firm was kept as

Laxminarayan Irrigation Scheme is without any basis, Mrs. Mehta submitted that the Courts below have not founded this finding on foams. They have only sought additional support or corroboration to the oral evidence of the plaintiffs, which is also a plea in the plaint and, therefore, the decisions of the Apex Court or other High Courts will be of no help.

9.6 As regards the decision of the Apex Court in the case of Madan Lal v. Gopi and Another, AIR 1980 SC 1754, wherein even in case of concurrent findings of fact, interference by the High Court was not interfered with by the Apex Court, Mrs. Mehta submitted that the said decision was rendered by the Apex Court in special facts of that case and that Their Lordships were unequivocal about the fact that the said decision cannot be understood to be a charter for interference by the High Courts with the findings of facts recorded by the final Court of facts. She, therefore, submitted that the appeal may be dismissed.

10. Before adverting to the findings required to be given to the questions formulated by this Court while admitting this appeal, it would be appropriate, if the contentions raised by Mr. Patel, learned advocate for the appellants, for formulating further two questions are addressed to. Mr. Patel suggested to formulate following two questions:-

(1) Whether, in the facts and circumstances of the case, because of the deceased-Keshavanandji being a partner, the suit was barred by limitation?

(2) Whether the First Appellate Court committed an error in not deciding Ex.19.

10.1 The first question that is suggested by Mr. Patel is regarding limitation. It may be noted that this plea is raised, for the first time, in this second appeal. Neither in the suit while filing written statement nor in the First Appeal this plea was taken by the appellants. Further, the question of limitation that is sought to be raised is on basis of the fact that Keshavanandji was a partner in the firm in his personal capacity and on his demise, the partnership got dissolved in 1972 and, therefore, the suit could have been brought within three years therefrom, whereas, the suit is brought in 1978 and is, therefore, time barred. This plea is against and contrary to the plea taken by the defendants in their written statement where they have denied existence of any partnership either with the trust

or with Keshavanandji and, therefore, for arriving at this finding, this Court would be required to appreciate the evidence in a second appeal and in doing so, the Court would be required further to re-appreciate the findings of the Courts below on factual aspect as to whether the plaintiff-trust was a partner or not, which is given by both the Courts below on basis of the evidence before them. It is apparent that this question is raised only as an after thought. In the opinion of this Court, therefore, there is no need to formulate this question.

10.2 Regarding the second question suggested by Mr. Patel, it may be noted that an application Ex.19 was tendered before the First Appellate Court by the appellants/defendants for adducing additional evidence. Below that application an order was passed - "to be heard along with the appeal" - on the 18th September, 1982. Thereafter, the appeal was finally heard and decided and Ex.19 has remained undecided. It appears that the appeal was finally heard on October 13, 1982. It is true that the application has remained undecided, but it is also true that the appellants do not appear to have pressed this application before the First Appellate court when the appeal was finally heard. Even thereafter, while filing this appeal, the appellants have not taken any contention or objection to the non-deciding of that application and, therefore, this contention cannot be raised at this stage when the case sought to be proved by adducing additional evidence is not even argued before the First Appellate Court and, therefore, in view of this Court, the second question suggested by Mr. Patel does not require to be formulated.

11. Now, adverting to the questions formulated by this Court while admitting this appeal, the first question that is raised is whether the lower Appellate Court has erred in law in holding that there was an oral partnership between the deceased Swami Keshavanandji on behalf of the trust and the defendants as alleged by the plaintiff. In this regard, it is contended on behalf of the appellant that there is no written partnership deed and the Courts below have placed reliance on loan application as well as mortgage deed which do not indicate any partnership. These two documents are at Ex.62 and 63. The findings given by the Trial Court are findings of fact on this question and, therefore, this Court may not enter into the arena of reappreciation of the evidence on which the findings are given. Still, however, in order to satisfy the conscience, this Court has examined these two documents, Ex.62 and 63. Ex.62 is

loan application and on page 3 in schedule "B", names of Rameshbhai Muljibhai and Kashiben Muljibhai are indicated as partners, if the loan is taken in partnership. This is a contemporaneous record which would reflect intentions of and understandings between the parties and, therefore, it cannot be said that the Courts below have committed any error of law in concluding that loan was taken by Keshavanandji in partnership with the defendants for the purpose of raising fund for the partnership since the raising of fund for the partnership is not in dispute and that it was done not in personal capacity but as a trustee of the Laxminarayan Trust. The appellants-defendants have admitted that the fund was raised by taking loan from Gujarat State Co-operative Land Development Bank Limited to finance the irrigation scheme, but that was in different capacity. That aspect stands negatived by this document and the plaintiff's case derives support as has rightly been held by the Courts below. Question No.1, therefore, is answered in the negative.

12. Coming to the second question formulated by this Court while admitting this appeal, this Court has to examine as to whether the lower Appellate Court has erred in law in not holding that the alleged partnership stood dissolved in view of the provisions contained in Section 42 of the Partnership Act on the demise of Swami Keshavanandji in the year 1972.

12.1 Since, as discussed above, it has been found that both the Courts below have not committed any error in holding that the partnership was between the defendants and Swami Keshavanandji on behalf of the trust, the question of partnership getting dissolved on demise of Swami Keshavanandji in light of provisions of Section 42 of the Partnership Act does not hold ground. Section 42 of the Indian Partnership Act, 1932 runs as under :-

"42. Dissolution on the happening of certain contingencies:- Subject to contract between the partners a firm is dissolved-

(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent."

It is true that a firm gets dissolved upon death of a partner, subject to contract of partnership. But when it is found that the trust is a partner and not Keshavanandji, upon his demise, the firm will not get dissolved by virtue of clause (c) of Section 42. Further, the appellants cannot raise this contention as their case from the beginning is that there was no partnership at all. Further, Section 42 indicates that a firm would get dissolved upon death of a partner, subject to the contract and, therefore, it is to be indicated that there was no contract to the contrary. When the appellants come with a case of non-existence of partnership and when against that case, the case of the plaintiff of the partnership between the trust on the one hand and the defendants on the other hand is accepted, this Court sitting in second appeal is not inclined to accept this contention. For the reasons discussed above, the partnership, as rightly been held by the Courts below, is between Laxminarayan Trust on the one hand and the defendants on the other hand. Question No.2, therefore, is answered in the negative.

13. Mr. Patel, learned advocate appearing for the appellants, placed reliance on the decision in the case of Ratanlal Bansilal and Ors. v. Kishorilal Goneka and Ors., AIR 1993 Calcutta 144 and submitted that even in a Second Appeal, the Court may interfere with the finding of fact if it is found that it is on no evidence. In support of his contention, he relied on the above decision as well as the decisions in Balvantra Chhabildas Mehta v. State Bank of Saurashtra, 1998(2) GLH 204, Jadu Gopal Chakravarty v. Pannalal Bhowmick and Others, AIR 1978 SC 1329 and Madan Lal v. Mst. Gopi and Others, AIR 1980 SC 1754. He submitted that the finding of the Courts below that partnership was between the trust and the appellants-defendants is without any material. It is not possible to accept this contention of Mr. Patel because a perusal of the record indicates that the plaintiff in his deposition at Ex.68 has categorically stated that the partnership was entered into between by deceased Keshavanandji as a trustee of the trust. This oral evidence derives support from Ex.62, the loan application form and the admission made by the defendant in his written statement that lands belonging to the temple was mortgaged with the bank for borrowing money for the purpose of financing the irrigation scheme. It, therefore, cannot be said that the findings of the Courts below are either without basis or are arrived at on gross

misreading of evidence. The decision rendered by Full Bench of Calcutta High Court in case of Ratanlal Bansilal and Others (supra) and by this Court in Balwantrai Chhabildas Mehta (supra) as also the decisions in Jadu Gopal (supra) and Madan Lal (supra) will not be attracted in the facts of the case.

13.1 Mr. Patel has relied upon the decision in the case of Nem Chand v. Gur Dayal, AIR 1925 (Oudh) 451 to support his contention that simple because name is indicated in the firm's name, it does not necessarily mean that the trust was a partner. In that case, it was held that names are indiscriminately used by Indian firms and, therefore, mere use of a name would lead any member of the public or any dealer to presume that a person whose name is so used is a partner in the firm. Mr. Patel, therefore, contended that simply because an irrigation scheme was run in the name of Laxminarayan, it does not mean Laxminarayan trust was a partner. In this regard, it may be noted that, as discussed above, there is ample material to indicate that the trust property was mortgaged for borrowing funds to finance the scheme. There is contemporaneous and cogent evidence to indicate the monies were borrowed by the trust to run the partnership business (Ex.62) and added to this is the deposition of the plaintiff to lend support to the factum of partnership that name of Laxminarayan was used as Laxminarayan trust was a partner. It, therefore, cannot be said that the conclusion is without any material as the sole basis for the decision of the Courts below is that, because name of Laxminarayan was used in the firm's name, Laxminarayan trust was a partner. The contention of Mr. Patel, therefore, cannot be accepted.

14. In view of the foregoing discussion, no interference is called for in the findings of the Courts below. The questions are answered as stated above, which would lead to dismissal of the appeal. The appeal is, therefore, dismissed. No costs.

[A.L. DAVE, J.]

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